

Chapter 3

Eligibility

This chapter will cover what work and expenses may be eligible for FEMA assistance after a disaster has occurred. Section A deals with general requirements that apply to all work. Sections B through E concern criteria that apply to specific types or categories of work. Specific work, as the result of a declared disaster, is divided into seven categories (A through G) and denoted alphabetically to coincide with the damage categories listed on the NOI. Categories A and B are considered emergency work and categories C through G are considered permanent work. Section F is about the types of costs that may be claimed against the eligible work. Section G covers insurance requirements imposed on assistance.

Section A - Basic Criteria

There are three general types of work that may be eligible, with different criteria for each:

- ◆ Debris removal;
- ◆ Emergency protective measures; and,
- ◆ Permanent restoration.

The following three general criteria apply to all types of work, and to all applicants. These three criteria are all required, but there may be additional criteria for specific types of work or facilities.

Direct Result

◆ The work must be required as a direct result of the declared event: severe storm, flooding, tornado, earthquake, etc. The declaration by the President will designate the event for which the declaration is being made; severe storms, tornadoes, floods, etc. Damages that result from a cause other than the designated event will not be eligible.

◆ There will be an “incident period” established by FEMA after consultation with the GAR. It will generally begin at the start of the event and will last as long as necessary to include all normal damages from the event. A tornado would probably have a one-day incident period, while flooding could last for several weeks.

◆ Primarily, damages that occur during the incident period, or are the direct result of events that occurred during the incident period, will be considered for eligibility. In addition, protective measures and other preparation activities performed within a reasonable time in advance of the event will be also considered. A flood on a major river can be forecast a few weeks in advance of when it will actually hit a community. Sandbagging and construction of temporary levees are typical of such eligible actions.

◆ Damages that occur after the close of an incident period that can be tied directly to the declared event may also be eligible. They may occur even a few months after the event and still be considered. For example, a landslide caused by heavy rains may not occur for some time after the rains have stopped. An engineering evaluation of the cause of the damage (such as a geologist’s report) may be required before a determination of eligibility can be made.

Damages that are caused by the negligence of an applicant, or any interested public or private organization or entity that is a grant recipient or any contractor, are not eligible for FEMA assistance. Damages caused by the failure of an applicant to take prudent measures to protect facilities from further damage after the disaster are also not eligible.

Designated Area

◆ The damages must have occurred, or the work or activity must be performed or support the performance of such work within the designated disaster area. When a declaration of a major disaster is made for a State, the Associate Director will designate those counties of the State that are eligible for assistance. The type of assistance available will also be specified: “public assistance (PA)” for State and local governments and for PNPs, and “individual assistance (IA)” for individuals and families. Different counties may be eligible for one or both types of assistance, depending on the needs of the area. Sometimes other political subdivisions of a State, such

as a city or special district, may be designated, but the county is the most common unit for designation. After the initial declaration and designations, the GAR may request additional areas to be eligible for assistance and the Associate Director or his/her designee may designate those areas if such action is warranted.

◆ The owner of a damaged facility which is within a designated area may be from an undesignated area, but the damaged facility will still be eligible and that owner may apply for assistance. However, if an owner from within the designated area has a damaged facility located outside the eligible area, that facility will not be eligible even if damaged by the same event.

Responsibility

◆ The work or expense must be the legal responsibility of the applicant at the time of the disaster. Generally, ownership of a facility is sufficient to establish responsibility for repairs to a facility. In the case of leased facilities however, the written lease may establish a different assignment of responsibilities. The ideal situation is for the lease to establish responsibility for repair of storm damage, as opposed to normal repair and maintenance. FEMA can then use the language in the lease agreement to determine eligibility. Since many leases do not refer to storm damage separately, they may have to be examined individually. In the absence of any mention in the lease, the owner of the facility will be assumed to be responsible for the repair.

◆ Mutual aid agreements between local governments or the State and a local government may establish the responsibility for reimbursement by the government receiving the assistance. An agreement may provide for an initial period of unpaid assistance before the receiving entity reimburses the donating entity. In such cases only the payments specified in the agreement would be reimbursed by FEMA. Such agreements must apply uniformly in declared major disasters as well as other emergency situations.

◆ Citizens' welfare and safety is the responsibility of State and local governments. Although they may have agreements with PNP organizations for the performance of services during emergency periods, responsibility remains with the government. Similar to mutual-aid agreements, these agreements must provide for pay-

ment in all situations and not just declared major disasters in order for such payments to be eligible for FEMA assistance. Assistance to pay for those services must be requested by the governmental unit, not the PNP organization.

Section B - Emergency Work

Category A - Debris Removal

Debris that may be eligible for clearance and removal includes trees, sand and gravel, building wreckage, vehicles, personal property, etc. To be eligible for FEMA assistance, such removal must be necessary to do one of the following:

1. Eliminate immediate threats to lives, public health and safety;
2. Eliminate immediate threats of significant damage to improved public or private property; or,
3. Ensure economic recovery of the affected community to the benefit of the community-at-large.

In general, debris that is on public property must be removed to allow continued safe operation of governmental functions and therefore will be eligible under one of the first two criteria. However, not all public property clearance will necessarily be eligible. Debris that is blocking streets and highways is a threat to public health and safety because it blocks passage of emergency vehicles or it blocks access to emergency facilities such as hospitals. Debris in a stream or flood channel may cause flooding from a future storm. If such flooding would cause an immediate threat of damage to improved property, then removal of the debris only to the extent necessary to protect against an event that could reasonably be expected to occur within five years may be eligible. However, removal of fallen trees in an unused forested or wilderness area would not normally be eligible.

Where temporary levees have been constructed as an emergency protective measure, removal of them will be eligible only to protect public health and safety or to protect improved public or private property.

In the above determinations “improved property” is defined as a structure, facility or item of equipment that was built, constructed or manufactured. It does not include land improved for agricultural use.

Debris on private property is treated somewhat differently. Debris removal from private property is the responsibility of the individual property owner aided by insurance settlements and assistance from volunteer agencies. Most homeowner fire and extended coverage insurance policies have specific coverage for debris removal and for demolition of heavily damaged structures. FEMA assistance is not available to reimburse private property owners for the cost of removing debris from their property; however, an eligible local or State government may pick up and dispose of disaster-related debris placed at the curb by those private individuals. Generally, this type of work is carefully controlled with regard to extent and duration.

If the debris on private business and residential property is so widespread that public health, safety, or the economic recovery of the community is threatened, the actual removal of debris from the private property may be eligible. In such situations, the work normally must be done or be contracted for by an eligible applicant. If the local government and the State are both incapable of arranging for the work to be done, direct Federal assistance may be requested. Procedures for this assistance are discussed in Chapter 2 - Section F - *Direct Federal Assistance*.

Debris removal from certain drainage structures may have to meet the following criteria:

Reservoirs. Removal of disaster-related debris from reservoirs may be eligible in accordance with the criteria for debris basins below. Not all reservoirs are cleaned out on a regular basis, and evidence of such maintenance must be provided to FEMA. In addition, removal of debris that poses an immediate threat of clogging or damaging intake or adjacent structures may be eligible (see discussion of immediate threat of damage above).

Natural Streams. Debris removal from natural streams is not normally eligible for assistance. Only debris that causes a threat to lives, public health and safety, or damage to improved property from a 5-year flood event, is eligible. Work to protect im-

proved property must have a favorable ratio of benefits to costs. Any work in natural streams must also be closely reviewed and monitored to minimize undesirable environmental effects.

Engineered Channels and Debris Basins. Debris removal from engineered channels, lined or unlined, and debris basins may be eligible. FEMA must be able to determine from maintenance records, the pre-disaster level of debris. The pre-disaster level of debris in the channel or basin is of particular importance to determine the amount of disaster-related debris. Such facilities must also have had a regular schedule of debris removal in order to be considered an actively used and maintained facility.

Debris may be cleared from roads and highways including the travel lanes and shoulders, roadside ditches and drainage structures, and the maintained right-of-way. Clearance from Federal-aid roads and highways will follow these criteria except when the Emergency Relief (ER) program of the Federal Highway Administration (FHWA) is activated. For highways being repaired by the ER program of FHWA, the debris would be removed as part of that work. Even when the ER program is activated for an area, FHWA assistance is granted only for portions of the road actually damaged by the disaster. Debris on undamaged sections of highway may be eligible for FEMA assistance.

The removal of debris from parks and recreational areas used by the public is eligible when it affects public health or safety or proper utilization of such facilities. Trees frequently constitute a large part of debris in these areas and some special guidance is appropriate as detailed below. (the replacement of trees that are in the park or recreational areas is covered in Section E of this chapter).

1. Debris in the wilderness or forested areas of these facilities that does not pose a health or safety threat is not eligible.
2. Hazardous trees within a naturalized area of parks or golf courses that are unstable and leaning into the areas used by the public are eligible for removal only, not replacement.
3. Normally, trees requiring removal are flush cut at the ground.

4. Generally, stump removal should not be considered eligible for reimbursement except when a tree eligible for replacement must be replanted in the same spot, or if it is determined that the stump itself would be a hazard as when the tree has been uprooted. When eligible, stump removal will be accomplished by the most economical means such as grinding.
5. A tree with more than 50 percent of the tree crown destroyed or damaged, a split trunk or broken branches that expose the heartwood, or that has been tipped over or uprooted, is eligible for removal, especially if it is in a location approximate to or within public use areas.
6. Should the applicant choose to attempt to save a tree with any of the conditions described above that justify its removal, then the expense will be the applicant's. Eligibility for funding in that case will be for removing the hazardous limbs only. If the tree is eligible for replacement, the applicant's eligible expenses of saving the tree are limited to the estimated costs of removing the damaged tree and planting a replacement in accordance with the criteria in section E of this chapter.
7. Hazardous limbs are limbs greater than 2 inches in diameter that are still hanging in the tree and are threatening a public use area such as a trail, sidewalk, road, golf cart path, etc.

For guidance in mobilizing, organizing, and controlling a large-scale debris removal operation, one may wish to consult DR&R 15 - *"Debris Removal Guidelines for State and Local Officials."*

Category B - Emergency Protective Measures

Emergency protective measures are those activities undertaken by a community before, during, and following a disaster to save lives, protect public health and safety, and protect improved public and private property. Generally, those prudent actions taken by a community to warn residents, reduce the disaster damage, ensure the continuation of essential public services, and protect lives and public health or safety, are eligible for assistance.

To be eligible for FEMA assistance, such activities must be necessary to do one of the following:

- ◆ Eliminate or reduce an immediate threat to life, public health or safety; or,
- ◆ Eliminate or reduce an immediate hazard that threatens significant damage to improved public or private property. This work can be funded only when the benefits achieved by the measure are greater than the costs.

Activities 1 through 12 below should be evaluated to ensure that the above criteria are met. The following are examples of activities that may be eligible:

1. Search and rescue.
2. Emergency medical care, to the extent that a State or local government is responsible.
3. Emergency mass care and shelter when such cannot be provided by volunteer agencies. If the applicant's facilities are used by the volunteer agency to provide this care, actual expenses incurred by the applicant, such as supplies, cleanup labor, etc., would be eligible. Expenses of PNP's for providing these services are not eligible because their services are generally charitable in nature.
4. Security in the disaster area to include warning the public of dangers by setting up barricades or other warning devices. Labor, equipment, and materials used in these activities are eligible.
5. Provision of food, water, medicine, and other essential needs at central distribution points for use by local citizens.
6. Provision of temporary facilities for essential community services. Examples include construction of a temporary bridge or detour road to replace an essential crossing facility, temporary hookup of utilities (power, water, sewer, etc.), and essential temporary buildings for schools or government offices.

7. Activation of an Emergency Operations Center (EOC) to coordinate and direct the response to a disaster event. This applies to both the grantee and subgrantee. Applicants must be careful in estimating and claiming these costs. Often an EOC is used to direct response activities for a period of time, and then its primary activity shifts to managing the Federal assistance. Because the Stafford Act places limitations on reimbursement for the costs of administering the FEMA grant, the applicant should make every effort to keep track of what duties are being performed by the EOC personnel (see *Administrative Expenses* in Section F of this chapter).
8. Demolition and removal of damaged public and private buildings and structures that pose an immediate threat to the safety of the general public. The threat must be identified by local officials and verified by State and Federal officials. Buildings that were condemned as a safety hazard before the disaster are not eligible.
9. Removal of health and safety hazards. Such activities may include the following:
 - ◆ Disposal of dead animals;
 - ◆ Pumping of trapped floodwaters;
 - ◆ Pumping of flooded basements only if there is a widespread need affecting numerous homes and businesses in the community;
 - ◆ Pumping of septic tanks or decontamination of wells only if there is widespread pollution problem; and,
 - ◆ Vector control of insects when there is a serious health hazard, not when they are merely a nuisance. Verification of the threat by the Federal Center for Disease Control (CDC) may be required.
10. Construction of emergency protective measures to protect lives or improved property to include the following:
 - ◆ Temporary levees or dikes and/or sandbagging by itself or on top of a levee;

- ◆ Buttrressing, bracing, or shoring of a damaged structure to protect against further damage to the structure, or to protect the general public;
 - ◆ Emergency repairs may be made to protective facilities damaged by the disaster. Eligible work is limited to that which would provide protection from a five-year event or the pre-disaster level, whichever is less.; and,
 - ◆ Placement of sand on a beach to serve as protection of improved property from waves and flooding may be eligible. The same criteria regarding the level of protection, as discussed above, apply to this work also.
11. Emergency measures to prevent further damage to the facility are eligible. Boarding windows or doors and covering the roof are examples of this work.
 12. If a privately owned access (driveway, road, bridge) is damaged, and it is not the direct responsibility of an eligible applicant for repair or maintenance, it may still be eligible for some assistance. If the lack of access is one of the reasons that a home is uninhabitable, the access may be eligible for repair or replacement. The work must economically eliminate the need for temporary housing assistance for those households served by the facility and must be performed by an eligible applicant. The extent of eligible work is limited to that which would allow the facility to remain passable after a five-year storm. FEMA would not be obligated for any assistance beyond this one-time repair.

Temporary facilities (Item 6. above) must be carefully evaluated. Generally, provision of temporary space whenever essential State and local government buildings have been damaged to the degree that they cannot be used until repairs have been completed is eligible, since a discontinuance or a lengthy interruption of certain governmental services could result in a threat to lives, property, public health and safety. Temporary facilities for essential community services provided by PNP organizations, such as medical, custodial care, educational, emergency, and utilities, generally will be eligible under these criteria. Other types of facilities must be carefully evaluated before providing assistance for temporary space to determine if the continuation of the service provided is

necessary to eliminate immediate threats to life and property. Temporary recreational facilities generally would not be eligible. If assistance for temporary facilities is eligible, assistance for moving to those facilities is also eligible.

The decision whether to rent or purchase space or an item of equipment must be evaluated in order to ensure the most cost effective use of FEMA funds. Once temporary facilities have been provided through FEMA funding, the maintenance and operating costs of such facilities are the responsibility of the applicant.

The eligible duration of time for provision of temporary facilities will be a reasonable time for the completion of the approved work. If a project is extended because of a non-disaster related reason, such as expansion of the project, or requirements for ineligible work, the eligible time for the temporary facilities will not be extended. If the eligible facility being repaired is owned by the applicant, reasonable rental of a temporary facility is eligible subject to the time limits noted. If the facility being repaired was rented, no rental costs for the temporary facility will be eligible.

Emergency Communications

The communications system in a local community may be damaged by a disaster to the extent that the local officials are unable to carry out their duties of providing essential community services or responding to the disaster. If this is the case, the establishment of a temporary emergency communications system may be eligible for assistance. This would most often take the form of a mobile radio system or cellular telephones if the area was served by a cellular system.

Such a system is meant to supplement the portion of the community's communications that remains operable, not to replace the entire system. The community is expected to repair the damaged system on an expedited basis so that the assistance can be terminated when there is no longer an emergency need.

Emergency Public Transportation

The essential portions of a community's transportation system may be damaged by a disaster to such an extent that the vital functions of community life are disrupted. This may involve damages to buses or a subway system, or a bridge between two sections of the city. For some of these damaged facilities, replacement with temporary facilities under section 403 of the Stafford Act may provide the solution. In other situations, there may not be any specific damaged facility, but there is still a need to supplement existing transportation. This may result from temporary changes in the location of government facilities or residential areas or a need to access different shopping areas. The supplemental system must be required to ensure access to public places, employment centers, post offices, and schools so that a normal pattern of life may be restored as soon as possible.

Alternative means of providing transportation may be eligible for assistance, such as extra buses or trains or new bus routes. The damaged facilities or other need for the supplemental transportation should be restored or corrected as soon as possible so that the assistance can be terminated when there is no longer an emergency need.

Section C - Permanent Restoration

A facility in active use and owned by an eligible applicant is generally eligible for permanent restoration. The first part of this section deals with permanent restoration work that may be eligible for assistance from another Federal agency. The subsequent part will describe the criteria for permanent restoration under FEMA's programs and also criteria unique to certain types of facilities. The three basic criteria discussed in section A, which apply to all work, likewise apply to permanent restoration and, therefore, that section should be consulted.

Other Federal Agencies (OFAs)

In addition to the basic three criteria for all work set out at the beginning of this chapter, there is one criterion that applies only to permanent restoration work. FEMA assistance is generally not

available for work or assistance that another Federal agency has the statutory authority to fund. This restriction will apply whether or not that agency has funds at the time a request is made. When a request is made that may be in this category, the responsible Federal agency will be asked to review the request and advise if the work is eligible under its authority. If the agency determines the work is not eligible, it should be asked to state the specific reason that assistance cannot be granted in that case.

Examples of such reasons may be: (1) the assistance is not within the statutory authority of the agency; (2) the agency does not have funds for the particular program at the time; or (3) the work is the responsibility of the applicant either by statute or by agreement with the agency. If the work falls outside the statutory authority of the agency (1), then FEMA may consider the work under the Stafford Act. If the denial is for either (2) or (3), FEMA assistance will not be available because the work is within the authority of the other agency and the eligibility was determined under that agency's regulations.

Another reason for denial may relate to whether the agency's program can reimburse an applicant for work done by that applicant. Some agencies must perform the work or contract for the work themselves. If reimbursement is not possible for this reason, then FEMA may consider assistance for emergency work already performed by the applicant. However, if there is no emergency need, FEMA will refer requests for permanent restoration to the appropriate agency.

The more commonly encountered Federal agency authorities are the following:

United States Army Corps of Engineers (USACE)

The USACE has a continuing authority to conduct advance flood preparation measures, flood fighting and rescue operations, and emergency repair and restoration of damaged flood control works. The USACE has authority to assist in the repair of locally owned and operated flood control works if they meet USACE eligibility criteria. Reimbursement of locally incurred costs is not available under this program. The most common reasons for USACE to deny assistance are the following: the facility is not considered a "flood

control work,” the work is within the scope of the local sponsor’s maintenance responsibility, or the functional capacity of the facility has not been diminished.

When the facility does not meet USACE’s definition of a “flood control work,” and also is not eligible for assistance from the Natural Resources Conservation Service (NRCS), it may be considered for FEMA assistance. However, if it is a facility that would be eligible for USACE assistance, but the scope of work is determined by the USACE to be within the applicant’s maintenance responsibilities or that the functional capacity of the facility has not been diminished, then FEMA will abide by the USACE determination and will not grant assistance.

The USACE also has authority to construct and repair facilities and to protect the shorelines of the United States. The repair authority extends only to federally constructed shoreline works, however, and not to locally owned facilities. Therefore, locally owned shore protection facilities may be considered for FEMA assistance.

Department of Agriculture - Natural Resources Conservation Service (NRCS)

The NRCS has an authority to repair flood control works that is very similar to that of the USACE for locally owned facilities. Because of these overlapping authorities, the two agencies have a Memorandum of Understanding (MOU) that provides guidance in dividing responsibilities when a disaster occurs. Basically, the USACE authority covers works constructed for flood control purposes, and the NRCS authority covers works constructed to prevent erosion or damage from erosion. The two agencies review requests from the State or local government for repair assistance and advise FEMA on which projects are eligible for funding by each agency and those that are not eligible for either USACE or NRCS assistance, with an explanation of each determination of ineligibility. FEMA may then consider those projects for assistance under the Stafford Act.

Federal Highway Administration (FHWA)

The FHWA administers an assistance program for roads and highways on Federal-aid highways throughout the United States. This is the Emergency Relief (ER) program (23 CFR part 125). Activation

of the ER program is an independent determination made by the Secretary of Transportation when requested by a Governor and is not automatic when the President declares a major disaster under the Stafford Act. Frequently the ER program is not activated when a major disaster is declared by the President. However, FEMA is prohibited from granting assistance for permanent repair of Federal-aid roads by the Stafford Act.

Therefore, there will be times when no assistance is available for permanent repair of Federal-aid roads. FEMA may assist with limited emergency repairs and debris clearance on Federal-aid roads for emergency access on a case by case basis. This assistance may be necessary if there is no ER program activated for the event or a particular road has no damage eligible for ER funding. State and local highway departments generally know which of their roads are Federal-aid roads.

There are certain roads on Indian reservations that have been designated by the Bureau of Indian Affairs (BIA) as Federal-aid roads. These roads are subject to the same restrictions as other Federal-aid roads discussed above. It may be necessary to consult BIA in order to determine repair responsibility of damaged roads on Reservations.

Department of Education (ED)

The Department of Education has authority under Public Laws 81-815 and 81-874 to grant assistance for the repair of publicly owned primary and secondary school facilities. Under the policy of deferral to the authority of another Federal agency stated at the beginning of this section, FEMA would allow ED to fund such repairs. However, under an exception to such policy for educational facilities, by mutual agreement between FEMA and ED, FEMA assumed responsibility for assistance for the repair of all facilities owned by local school districts, starting in FY 1992.

Permanent Restoration - FEMA

When it is determined that assistance under the Stafford Act is appropriate, the work necessary to restore the facility to perform its pre-disaster function with the same capability as before the disaster and at the pre-disaster designed capacity will be eligible. There are several factors that determine what work will be eligible.

Standards for Restoration Work

Once a facility is determined to be eligible for restoration by the above criteria, the extent of eligible work must be decided. Basically, work necessary to restore the facility in accordance with applicable standards is eligible. The issue of what standards are applicable to the work is very important in determining eligible work. There are five specific criteria which a standard must satisfy in order to be “applicable” to eligible work. To be eligible a standard must:

1. Apply to the type of repair or restoration being performed;
2. Be appropriate to the pre-disaster use of the facility;
3. Be in writing and formally adopted by the applicant prior to project approval;
4. Apply uniformly to all similar types of facilities within the jurisdiction of the owner of the facility; and,
5. For a standard in effect before the disaster, have been enforced during the time it was in effect.

The following discussion will consider these criteria individually.

For a standard to apply to a particular facility, it must apply to the type of restoration required by the disaster-related damage. Restoration can be divided into two basic categories: repair and replacement. If a facility is destroyed, a replacement will be necessary and standards in effect for new construction would apply and work associated with that standard would be eligible. Substantial hazard mitigation will generally result from the use of the standard for new construction. To promote this hazard mitigation benefit of new construction standards, a facility is eligible for replacement when repairs cost 50 percent or more of the replacement cost (i.e., *The 50% Rule*).

The 50% Rule is calculated in this manner: If repairs to a facility would cost 50 percent or more of the cost of replacing the facility to its pre-disaster design, then the facility is eligible for replacement. “Disaster damage”* in the 44 CFR 206.226(d)(1) determination of eligibility for a replacement facility shall include **only** costs for the repair of damage, and not the costs of any triggered or mandatory upgrading of the facility beyond the repair of the damaged elements (even though these upgrade costs may be eligible for FEMA

funding.) Thus, the determination of eligibility of a facility for replacement will be calculated by the following fraction: The cost of repair of the disaster damage (repair of the damaged components only, using present day materials and methods) divided by the cost of replacement of the facility with a facility of equivalent capacity, using current codes for new construction. If this calculation is greater than 50 percent, then replacement is eligible for FEMA funding under 44 CFR 206.226(d)(1).

The following table provides some examples to illustrate eligible cost determinations.

Conditions	Eligible Costs
1. When damage repair does not exceed 50% of the replacement cost** and No upgrade trigger is pulled.	Repair of eligible damage* only.
2. Damage repair does not exceed 50% of replacement cost** and Whole building upgrade is triggered by an “applicable code or standard,” but the total of the two items is greater than 50% but less than 100% of replacement cost.**	Repair of eligible damage* plus mandatory upgrade cost.
3. Damage repair does not exceed 50% of the replacement cost** and Whole building upgrade is triggered, and the total of the two items is estimated to be greater than 100% of replacement cost.**	Repair of eligible damage* plus upgrade cost, but the total eligible costs capped at the replacement cost.**
4. Damage repair exceeds 50% of replacement cost.**	The building's full replacement cost** (but no more than its replacement cost) is eligible.

Notes: * “Damage repair” in these examples includes repair of damaged components only. The cost shall include all the work necessary to return the building to its pre-disaster condition utilizing modern materials and methods for the repairs. The calculation shall not include the costs of any triggered or mandatory upgrading of the facility, site work, or applicable soft costs (even though these costs may be eligible for FEMA funding).

** “Replacement cost” is replacement of the same size or designed capacity and function building to all applicable codes. The calculation shall not include the costs of demolition, site work and applicable soft costs (even though these costs may be eligible for FEMA funding).

In most cases this limitation will not be a problem. Generally, restoration of historic structures using required historic methods and materials will be eligible for FEMA funding. However, when damage to a historic building triggers a requirement to upgrade the structure to new construction standards and historic features are maintained at the same time, the repair cost may exceed replacement cost. The cost limitation will not limit or dictate the type of restoration that the applicant performs, but will limit the amount that FEMA will reimburse. The regulations contain an exception to this funding limitation that applies only in a very narrow range of situations: that is, when there is a standard that requires the facility to be restored and that restoration must be in a certain manner, and it allows no other option such as leaving it unrestored. If an applicable standard requires such action, the eligible cost to complete the restoration may exceed the replacement cost. Restoration of historic structures is discussed further under Environmental Reviews.

The standard must be a formally adopted written ordinance of the local jurisdiction or state in which the facility is located, or of the Federal Government and be in effect before project approval by FEMA. The extra time for the adoption of a standard is intended to encourage enactment of standards that will mitigate hazards. If the applicant indicates a desire to enact a new standard, and the standard is adopted before FEMA has approved the basic DSR for permanent restoration of the project, the compliance costs may be eligible.

The standard must apply uniformly to all similar types of facilities within the jurisdiction of the owner, regardless of the source of funding for such projects. This requirement works in conjunction with the final requirement; an existing standard must have been uniformly enforced during the time it was in effect. An applicant may be asked to provide a list of facilities, in both the public and private sectors, where compliance with the standard was required.

Relocation

An applicable standard, such as a floodplain management regulation, may require that a facility be relocated away from a hazardous area. FEMA may also require that a facility be relocated if, in FEMA's opinion, it is and will be subject to heavy repetitive dam-

age because of its location. In both situations, approval of the relocation may be granted if the approval is not barred by other provisions of FEMA regulations, and the overall project including all costs is cost effective.

When relocation is required, eligible work includes removal of the old facility, construction of a new facility, land acquisition, and ancillary facilities such as roads and utilities. *All* of these costs must be considered in determining if the project is cost effective. The damages prevented by moving away from the hazardous location will be on the benefit side. Generally, the project will only be cost effective if the damages are severe enough that the facility qualifies for replacement.

When relocation is required by FEMA, the future involvement of Federal funding at the old site must be kept to a minimum. Therefore, no future assistance for the repair or replacement of a facility subsequently built at that site will be approved, except for facilities or structures that facilitate an open space use, in accordance with the Floodplain Management Regulations, 44 CFR Part 9. Examples would include minimal facilities for a park, such as benches, tables, restrooms, minor gravel surface roads and the like. When such a restriction is placed on a site, the applicant will be notified in writing of such limitation by the DRM.

If relocation is not feasible or cost effective, and restoration in the original location is not a practicable alternative because of floodplain, environmental, or other hazard mitigation considerations, FEMA funding will be available only in the form of an alternate project. The funding for the alternate project will be 90 percent of the Federal share of the Federal estimate to restore the facility at the original site without any mitigation measures.

Hazard Mitigation

The restoration of a facility in accordance with a construction standard different from that used for the original structure will frequently result in considerable hazard mitigation. That was the intent in encouraging the adoption of new standards after a disaster. In addition FEMA will consider other measures for eligibility that may mitigate the effects of the hazard that caused the disaster. The measures must be cost effective; i.e., the benefits of the measure must exceed the costs.

The measures may be proposed by the applicant, State, or FEMA inspector during the preparation of the DSR. As part of its hazard mitigation planning process between disasters, an applicant is encouraged to develop measures that can be implemented when the opportunity is presented by disaster repair. Some measures may not be cost effective until the incremental cost for incorporating the measure is reduced by the fact that it can be made part of the repair of disaster damage.

The FEMA reviewer may also propose hazard mitigation measures during the review in the disaster field office (DFO). A proposal initiated by someone other than the applicant will be first discussed with the applicant before a decision is made by FEMA. If the measure is appropriate and cost effective, FEMA will approve the DSR with the condition that the measure is included in the project, and the costs will be included in the approved total.

Such mitigation measures are generally directly part of the reconstruction work on a facility or will protect or benefit the repaired facility. They are different from mitigation measures that could be considered for eligibility under the Hazard Mitigation Grant Program of Section 404 of the Stafford Act. In that program, measures are proposed that may involve facilities other than those damaged by the disaster, new facilities, or even non-structural measures such as development of floodplain management regulations.

Environmental Assessment and Floodplain Management Review

The possibility of an EA or an Environmental Impact Statement (EIS) being required before a project is approved has been previously discussed.

A different review process may be required for actions in or affecting the floodplain. This is required by the floodplain management regulations at 44 CFR Part 9. The completion of an EA, EIS, or a floodplain review is a Federal responsibility, which FEMA will fulfill. However, the State or an applicant may be asked to supply information as part of the process. Reasonable costs for such work may be eligible for reimbursement at full cost.

Disaster damaged facilities which are listed (or are eligible for consideration for listing) on the National Register of Historic Places will be reviewed. The State Historic Preservation Officer (SHPO) shall be consulted in this review.

As a result of these reviews, mitigation measures may be required to be incorporated into the reconstruction of the facility. As measures required by FEMA, their costs will be eligible.

Facilities Under Construction

The eligibility of facilities under construction follows the basic eligibility criterion that an item of work must be the responsibility of the applicant to be eligible. Generally, a facility under construction is the responsibility of the contractor until it is accepted by the owner. Since a private contractor is not an eligible applicant, that portion of the facility under contractor responsibility is not eligible for FEMA assistance.

Those portions of the facility accepted by the applicant would be eligible. In addition, the entire facility could be eligible if the contract places the responsibility on the applicant during the construction period.

Engineering and Design

Technical services associated with a construction project may be eligible work. These services consist of basic design and inspection services normally performed by an architectural-engineering (A&E) firm as well as a number of additional services not necessarily required with every construction project.

The basic services consist of the following items:

1. Preliminary engineering analysis;
2. Preliminary design;
3. Final design; and,
4. Construction inspection.

For purposes of estimating costs on a DSR, basic engineering services may be based on a percentage of the estimated construction cost (refer to the cost eligibility in section F of this chapter). Over the years, engineering experience has established an approximate correlation between engineering costs and construction costs. This correlation has been used to generate curves A and B for engineering services costs

shown at the end of this section. Although the percentage basis is used to estimate approximate design costs, it may not be used to contract or pay for these services (see 44 CFR 13.36). FEMA-eligible costs will include reasonable actual costs incurred for basic engineering services. Any cost in excess of the amount approved by the DRM must be justified to the satisfaction of the DRM. If the DRM believes that costs charged for engineering services are not reasonable, then the applicant may be required to obtain a breakdown of the architectural-engineering charges. An audit may be required if the DRM still does not have sufficient justification for the costs claimed. The DRM may establish lower percentages than shown on curve A or B for a particular project.

Curve A (figure 3-1) applies to projects of above average complexity and non-standard design. Curve B (figure 3-2) applies to projects of average complexity. Examples of each type of project are listed on each graph.

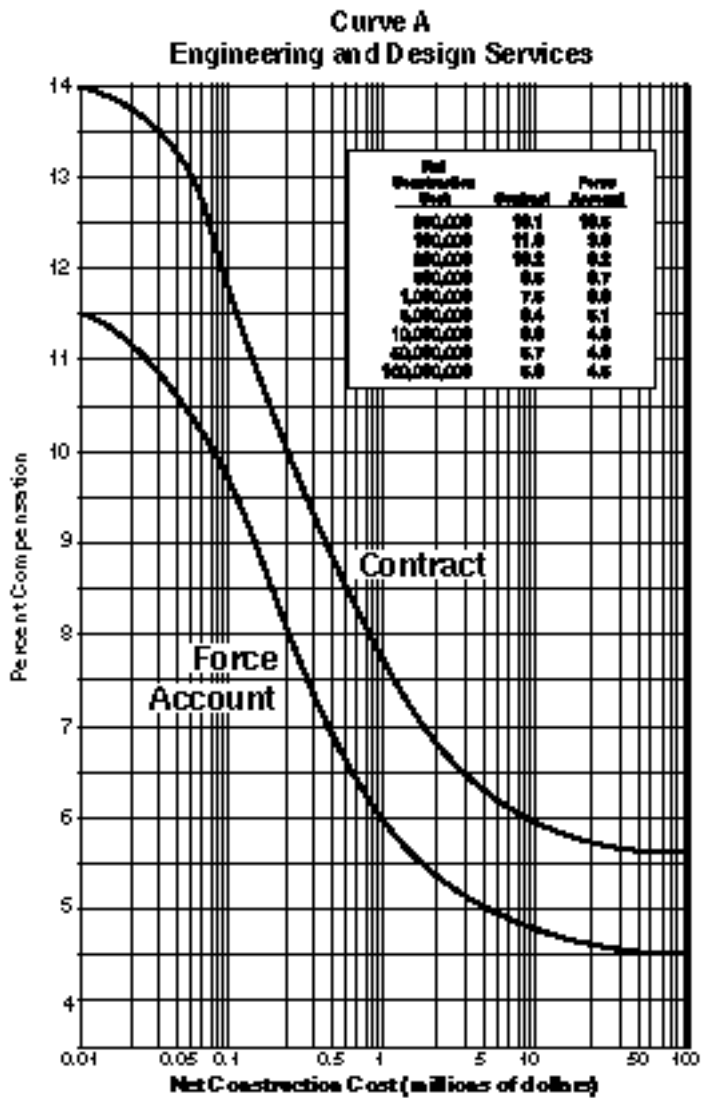
In addition to the basic services described above, the following special services may be eligible: engineering surveys, soil investigations, resident engineer, and feasibility studies.

The above special services are not required on all projects and are not included in the fee for basic engineering services. They should be specifically described and justified on the DSR for projects that require such services. The types of contracts that may be used for engineering services are discussed later in this chapter in the Section *F - Cost Eligibility*.

When the nature of the work requires only basic construction inspection service, a fee that does not exceed 3 percent of construction cost will be used for the DSR estimate. An example of a project requiring only inspection services but no design would be a debris disposal site where the material must be carefully placed and compacted to ensure stability. This inspection service includes some or all of the following items:

1. Review of bids;
2. Work site inspection visits;
3. Checking and approval of material samples;
4. Review of shop drawings and change orders;
5. Review contractor's request for payment; and,
6. Acting as owner's representative.

Figure 3-1



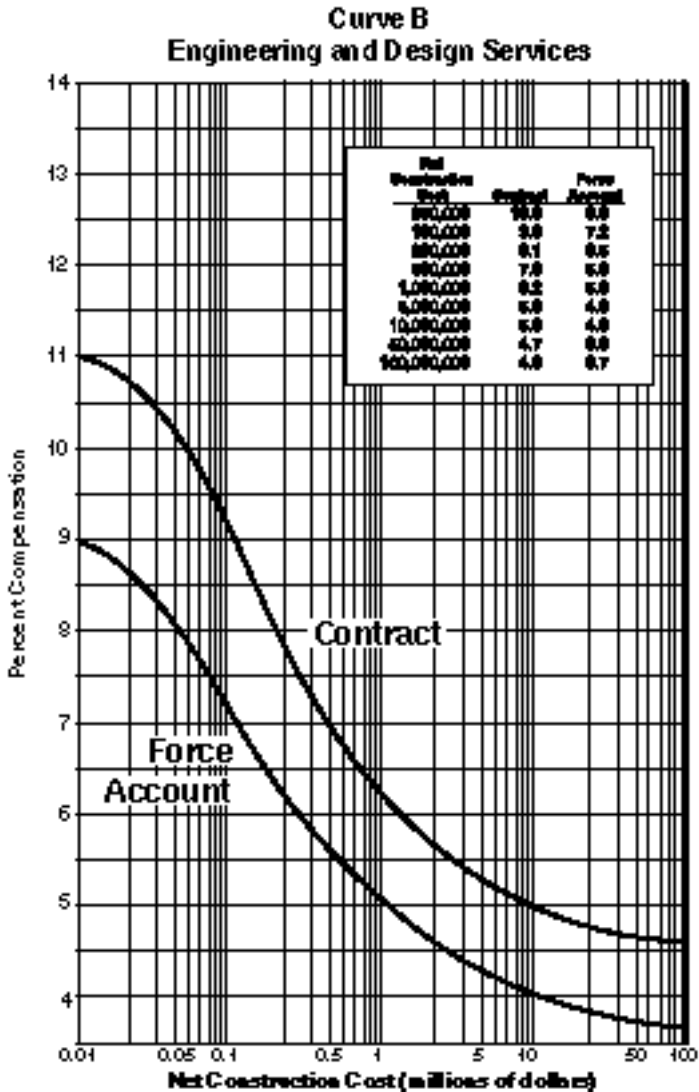
Curve A Projects:

- (a) Airports with extensive terminal facilities
- (b) Water, waste water and industrial waste treatment plants
- (c) Hospitals, schools, and office buildings
- (d) Power plants
- (e) Large dams and complicated small dams
- (f) Highway and railway tunnels
- (g) Pumping stations
- (h) Incinerators
- (i) Complicated waterfront and marine terminal facilities

Curve A estimated costs for basic services expressed as a percentage of construction cost for projects of above-average complexity and non-standard design.

"Contract" and "Force Account" above mean Engineering and Design Services performed by contract or by an applicant's own employees, respectively.

Figure 3-2

**Curve B Projects:**

- (a) Industrial buildings, warehouses, garages, hangars, and comparable structures
- (b) Bridges and other structures of conventional design
- (c) Simple waterfront facilities
- (d) Roads and streets
- (e) Conventional levees, flood walls, and retaining walls
- (f) Small dams
- (g) Storm sewers and drains
- (h) Sanitary sewers
- (i) Water distribution lines
- (j) Irrigation works, except pumping plants
- (k) Airports except as classified for Curve A

Curve B estimated costs for basic services expressed as a percentage of construction cost for projects of average complexity.

"Contract" and "Force Account" above mean Engineering and Design Services performed by contract or by an applicant's own employees, respectively.

Miscellaneous

There are several restrictions that apply to all facilities:

A facility must have been in active use prior to the disaster. Exceptions to this requirement are situations in which a facility was temporarily shut down for repairs or remodeling, or if a leased facility was inactive between tenants. If a previously vacant facility was scheduled for use in an approved budget, or if the applicant can demonstrate to FEMA's satisfaction an intent to begin use within a reasonable time, then it may be considered eligible for assistance. This principle may also be applied to a facility that is partially occupied and partially vacant.

Another restriction may be imposed if, at the time of the disaster, a facility was being used for a less demanding function than its original purpose. Restoration will be limited to that required to resume the immediate pre-disaster use. For example, if an office building was being used as storage facility, only those repairs needed for a storage building would be eligible. Lighting and wall and floor finishes typical of an office would not be needed and, therefore, may not be eligible for disaster assistance.

The designed capacity of the facility, either as originally designed or by later design modifications, will govern the extent of eligible work when a facility is being replaced. If a facility was being used in excess of its designed capacity, that factor would not increase the eligible capacity of a replacement facility.

Another general restriction concerns facilities that are scheduled for replacement using Federal funds. If such a replacement was scheduled to begin in the 12 months following the disaster, repair of that facility would not be eligible for FEMA assistance. An example of a continuing program of this nature is the FHWA bridge replacement and rehabilitation program. In it, State or locally owned bridges are replaced with FHWA assistance. The State sets priorities for this program and determines what bridges will be replaced. If a disaster damages or destroys a bridge scheduled for replacement, the State should be able to reschedule so that the damaged bridge can be replaced immediately rather than later in the year.

A somewhat similar situation occurs when replacement of a facility or portion of a facility is already under contract using non-Federal funds but work has not started. In that case, damages to that

portion being replaced would not be eligible for assistance. The amount of ineligible costs to be deducted from the total disaster damage is the amount of the contract work. Similarly, if a Federal or State agency or other governing or regulatory body had directed the applicant to correct deficiencies in a facility before the disaster, and the work had not yet been completed and accepted by the owner, the estimated cost of that work would also be deducted from disaster damages. The eligibility of any such work in progress would depend on how responsibility was assigned in the contract.

Section D - Categories of Facilities

Category C - Roads and Bridges

When inspecting roads and bridges, FEMA may request pre-event bridge inspection reports. In the event a report indicates the bridge was damaged prior to the disaster, FEMA will take this into consideration in evaluating what assistance is eligible. As noted before in the discussion of FHWA programs, any facility, whether it is a road, bridge or auxiliary structure, that is part of a Federal-aid road, street or highway, is not eligible for FEMA permanent restoration assistance. Federal-aid highways are defined as “other than highways classified as local roads or rural minor collectors.” It is generally not difficult to determine if a road is a Federal-aid road since most State and county highway engineers will know which roads are eligible for Federal aid.

Even when the Federal Highway Administration (FHWA) declines to grant assistance for a damaged facility that is on a Federal-aid road, permanent repair of that facility is not eligible for FEMA assistance. Therefore, the question of whether or not a facility is a Federal-aid road is critical to the FEMA determination.

The following discussion of landslides and related problems applies to restoration of almost any facility, but is most applicable to roads and highways.

Generally, when landslides are involved, FEMA public assistance applicants are eligible for grants to repair certain and specific facilities and restore the ground necessary to physically support these facilities (defined as “integral ground restoration”) as well as

emergency protective measures and debris removal. Slope or hill stabilization exceeds integral ground restoration and is therefore not eligible for funding.

Under the Stafford Act, emergency protective measures to stabilize slopes and hills that were damaged by a disaster may be eligible only if necessary to eliminate or lessen immediate threats to life, public health, safety, or significant additional damage to improved public or private property. This same criteria applies to the removal of **landslide** debris, and landslide debris removal may also be covered when it ensures the economic recovery of the affected community to the benefit of the community at large. Technical studies may be eligible to determine appropriate engineering methods for reducing the immediate threat. In accordance with FEMA regulations, emergency work and debris removal must be completed within 6 months of the disaster (plus approved extensions).

Before funding to restore the facility at the original site is approved, the stability of the site must be established. The Regional Director may approve a geotechnical study that should be limited in scope to determine (1) the stability of the site before restoration of the facility; and (2) the stability of the site after restoration of the facility (conceptually).

If the site is found to be stable, the cost to restore the facility at the original site and the ground necessary to physically support the facilities is eligible.

If the site is found to be unstable and the instability was exclusively caused by the disaster, the cost to restore the facility at the original site and the ground necessary to physically support the facilities is eligible.

If the site is found to be unstable due to an identified, pre-existing condition (e.g., a deep-seated slip-plane), the applicant is responsible for stabilizing the site. Once the site has been stabilized, the cost to restore the facility at the original site is eligible.

Permanent earth repair that is not integral to the restoration of a public facility on a stable site is not eligible for reimbursement. In accordance with FEMA regulations, permanent work must be completed within 18 months of the disaster (plus approved extensions).

One option available to the applicants under the Hazard Mitigation Grant Program (HMGP) is to apply for funding to stabilize a site or relocate the original structure. The HMGP is a specific sum of money limited to each declared disaster. Projects must meet program eligibility criteria as stated in FEMA regulations (44 CFR 206 Subpart N). The State, as grantee, prioritizes and selects projects for funding under this program.

Although standards for road and bridge construction would apply to these facilities, including standards relating to traffic capacity, FEMA will only fund one-lane roads and bridges to replace one-lane roads and bridges or two-lanes with two-lanes. Standards for pavement and width of individual lanes however, would apply.

Category D - Water Control Facilities

Water control facilities include dams, levees, lined and unlined engineered drainage channels, shore protective devices, and pumping facilities. These facilities owned by an eligible applicant may be eligible for repair assistance; however, the USACE has primary authority for the repair of flood control works, whether constructed with Federal or non-Federal funds. Only Federally authorized and funded shore protective devices are eligible for repair assistance from the USACE.

FEMA will refer a request for assistance to repair a flood control facility to the USACE and the NRCS to determine if it is eligible under their programs. Refer to *Other Federal Agencies (OFAs)*, Section C, in this guide. If the facility does not meet the definition set for that agency's eligible facilities, then FEMA will consider the request. Because the USACE does not reimburse an applicant for work it has done itself or by contract, FEMA will consider such work only if it is truly emergency work necessary to meet immediate threats to improved property. If the applicant proceeded with permanent repairs because it did not want to wait for the USACE, FEMA will not assist such work. The other agency may also determine that the work is within the maintenance responsibility of the applicant or that the extent of the damage is not sufficient to warrant Federal assistance. FEMA will not assist in those situations either.

Category E - Buildings and Equipment

Buildings, their contents, and all types of equipment including vehicles may be eligible for repair or replacement under the general work criteria discussed earlier in this chapter, as well as criteria to be discussed here. The discussion of applicable standards is particularly important to buildings. One other issue of standards relates to a building's use rather than the method of construction. When a building is eligible for replacement, the eligible capacity of the replacement facility may not exceed the designed capacity of the original facility including designed changes. However, applicable standards may have changed regarding space per occupant so that the eligible replacement would be the larger of the original area or the new square foot requirement per occupant times the designed number of occupants. These must be mandatory standards such as those imposed by a Federal agency or State health or education department and not those practices that merely have become usual or normal in an industry or profession.

The requirements for access to buildings by persons with disability as specified in the Rehabilitation Act of 1973, and its amendment of 1978 and the Americans with Disabilities Act of 1990 (ADA) will apply to restoration under the Stafford Act. The regulations implementing the first two acts are at 36 CFR Part 1190. Regulations implementing Title II of the 1990 Act are at 28 CFR Part 35. Facilities covered by the existing regulations are any building or facility that is accessible to the public, or in which persons with disability may be residing or employed.

Generally, each altered element, space, feature, or area will comply with provisions for new construction. **If the eligible work constitutes "substantial alteration" as defined in the regulations (alterations equaling 50 percent of building value over the past 12 months), the addition of certain accessibility features may be required.**

When museums, either publicly owned or owned by a PNP, are involved in disasters, frequently the objects on display, as well as the museum building itself, are damaged. Art objects in a museum, by their very nature, are generally one of a kind and thus cannot be replaced. Art objects which are destroyed will not be replaced and there will be no FEMA assistance for those objects. However, some

damaged objects may be able to be “conserved.” Conservation of art involves a process of “maintaining” art for display purposes, and, in response to damages to the artwork, affecting only the minimum measures required to place the piece back on display. Under the conservation approach, the repairs should be made only so that the visual aesthetic integrity of the art work not be interrupted. There should be no attempt to recreate design elements except in instances where the visual integrity demands it. The effects of the damage are therefore incorporated into the “history” of the work of art as it currently exists. All work should be carried out in accordance with The American Institute for Conservation of Historic and Artistic Works’ (AIC) code of ethics and standards of practice. It is appropriate to provide disaster assistance for the purpose of “conservation” of damaged pieces. This will involve taking the minimum steps which are both necessary and feasible to place the items back on display without restoring them to their pre-disaster condition.

When equipment, including vehicles, is not repairable, FEMA will approve the cost of used items that are approximately the same age and condition. Replacement of an item with a new item may be approved if a used item is not available within a reasonable time and distance. When a piece of applicant-owned equipment is performing eligible disaster work, extraordinary damages as a result of the disaster may be eligible. This does not include increased maintenance as a result of the equipment being used more hours than normal; the FEMA equipment rate covers that type of cost. Damages that could have been reasonably avoided are also not eligible. Reimbursement for the eligible damages is in addition to the applicable FEMA equipment rate being paid for the time the equipment was performing eligible work before being damaged.

Insurance coverage information for all items in this category will be requested of the applicant. If there is coverage, the amount of settlement will be noted on the DSR. The DSR may be suspended pending determination of the settlement amount. Additional information on insurance is contained in section G.

Category F - Utilities

There are a few specific requirements that apply to the restoration of utilities. The general requirements of Sections A, B, and C of this chapter should be followed. Another general requirement for all types of utilities is that increases in operating expenses, even if a result of the disaster, are not eligible.

As noted before, identifying the existence of damages to facilities is the responsibility of the applicant. Because utility pipelines are generally buried underground, this identification may be particularly difficult. Surveying a pipeline with a television (TV) camera is a common method of identifying and locating damage. However, there must be some evidence of damage to the pipe for such TV survey work to be eligible. Once the existence of damage is established, the use of TV to determine the extent of damage and methods of repair may be eligible. Random surveys to look for damage will not be eligible unless damage is actually found, and then only for the section where the damage is found.

Evidence may be in the form of ground surface subsidence indicating infiltration into the pipe. Other pipe systems in the same area suffering breaks also may justify a TV survey of a sewer line. In the case of a random search that does discover damage, the eligible cost of the survey will be limited to a prorated portion of the total cost of the survey based on the length of the section where the damage was found.

When evaluating the repair of multiple breaks in a pipeline or other continuous facility, the possibility of replacing a whole section should be investigated. If the breaks are close together, replacing the entire section of pipe may be more economical than piecemeal repair.

Category G - Parks, Recreational and Other

Buildings, roads, utilities, etc., located in parks or similar areas, will be evaluated under criteria for those types of facilities. Facilities including playground equipment, swimming pools, boat docks, piers, bath houses, tennis courts, picnic tables, and golf courses are generally also eligible. Although restoration of natural features is not normally eligible, there are two items that require special consideration.

Beaches

Constructed beaches may be eligible in this category if they meet certain specific criteria. To be eligible for other than emergency protective measures, a beach must be an improved beach. To be an improved beach, it must have been designed and constructed using an analysis of sand grain size to determine the elevation and the width of the berm. The beach must also have an established maintenance program with sand renourishment at no more than five years. The applicant will be required to submit supporting documentation in the form of the following information:

- ◆ Copies of any studies prepared prior to construction including the analysis of sand size.
- ◆ Copy of as-built plans and design specifications.
- ◆ Information pertaining to maintenance of the improved beach, such as the following:
 - ◆ the established renourishment programs for the beach;
 - ◆ the quantity, cost and source of sand placed on the improved beach by year (this information must cover the period of time since the beach was constructed or ten years, whichever is less); and,
 - ◆ cross sections before and after each sand placement.
- ◆ Post-storm cross sections of the improved beach.
- ◆ Pre-storm cross sections of the improved beach. If such cross sections are more than one year old, a prorated historical erosion rate of the sand will be applied for the time between the last survey and the storm to approximate the pre-storm cross sections.

Trees, Shrubs, and Other Plantings

Grass and sod are eligible costs only when necessary to stabilize slopes and minimize sediment runoff. Grass and sod for cosmetic purposes are not eligible costs. Replacement costs for trees, shrubs, and other plantings (except grass and sod) are not eligible costs.

This policy does not affect debris removal and emergency measures normally covered as Categories A and B of Emergency Work (refer to pages 40 - 47).

Section E - Cost Eligibility

The “Common Rule” for grant administration, 44 CFR Part 13, establishes general policies for allowable costs that may be claimed for the performance of eligible work. 44 CFR 13.22, Allowable Costs, contains specific references to the applicable Office of Management and Budget (OMB) Circulars for different types of subgrantees. For the general discussion in this guide, Circular A-87 Cost Principles for State and Local Governments, should be used for State, local, or Indian tribal governments. The other OMB cost circulars, Circular A-21 for educational institutions, and Circular A-122 for other PNP organizations are essentially the same as Circular A-87.

Generally, reasonable costs that can be directly tied to the performance of eligible work will be eligible. This includes all labor, materials, and equipment costs for the work as well as contracts awarded for the performance of eligible work. Labor costs include actual wages paid, straight time and overtime for permanent repair or restoration work only, plus fringe benefits actually paid or credited for personnel on the job and for supervisory personnel

administering the eligible work. Salaries of general supervisory personnel who are not normally employed in the field are not eligible unless they are working full time on the project. For emergency work, labor costs only include actual wages paid for overtime, plus a prorated share of fringe benefits for personnel. The provisions of the Davis-Bacon Act that relate to wages to be paid on Federal contracts for public buildings or public works do not apply to State or local contracts using FEMA public assistance funds under the Stafford Act. Refer to section G of this chapter for special requirements concerning actual and potential insurance recoveries as they relate to eligible costs.

Contracts must be in accordance with the procurement section of the Common Rule, 44 CFR 13.36. Generally, a local jurisdiction's own contracting procedures that reflect applicable State and local laws and regulations will be acceptable. There are minimum standards in the common rule section that must be followed. In particular, the following types of contracts may not be used: 1) cost-plus percentage of cost; and 2) percentage of construction cost. For most procurements, competitive practices should be followed although there are exceptions allowed, when emergency conditions make competition impractical. However, even in emergency situations, competitive proposals, as opposed to sealed bids, generally can be obtained quickly enough to meet the emergency need.

The Stafford Act contains specific reference to costs of National Guard labor and prison labor. These references do not confer any special eligibility on these costs. Costs of using National Guard personnel to perform eligible security, debris clearance or construction work, etc., are eligible to the extent that those costs are being paid by the State. Prison labor costs are eligible at the wage rate actually paid. For guards, transportation, and food, only the incremental extra costs for those items may be claimed.

44 CFR 13.24 provides the necessary guidance for crediting volunteer efforts. For emergency and permanent repair and restoration work, unpaid volunteer efforts (labor, supplies, loaned equipment, etc.) should be valued at rates, market value, etc., consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. These services may be applied to the cost sharing or matching requirements or the eligible work only.

Excess credit greater than the cost sharing or matching requirements is non-transferrable to other projects of the subgrantee or grantee.

Two other items of cost are treated differently from the guidance in OMB Circular A-87. They are costs of using applicant-owned equipment and the costs of administering the FEMA grant assistance.

Equipment Rates

Costs for the use of equipment owned by the subgrantee (applicant) may be claimed at an hourly rate for the time the equipment is actually performing eligible work. If a piece of equipment is at the job site all day and is used intermittently for the *majority* of the day, the full day may be claimed. Equipment used less than half a day should be claimed for the hours it was actually used. FEMA will not pay for equipment that can be considered to be idle.

If a local government is using *reasonable* rates that have been established or approved under State guidelines, such rates will be eligible up to a rate of \$75 per hour. Rates in excess of \$75 per hour shall be approved by FEMA on a case-by-case basis. Rates used by a State agency for its own equipment are, by definition, rates established under State guidelines. Care must be taken to examine the rate schedule when a State or local government says it is using State equipment rates. Some State highway departments have a schedule of rates for “force account” work, the meaning of which is generally different from its meaning in the disaster assistance program. State highway usage of the term means a rate for contractor’s equipment doing extra work on a project, as opposed to a rate for State-owned equipment. Therefore, FEMA must verify that any such rate schedule is actually for grantee or subgrantee-owned equipment.

When a local government is using locally developed rates, reimbursement is based on those rates or the published FEMA Schedule of Equipment Rates, whichever is *lower*. If the local rate is lower, and the subgrantee certifies that its rates do not reflect all actual costs, then the higher FEMA rates may be used. The subgrantee may be requested to provide documentation of the basis for its rates. If a subgrantee wishes to claim a rate higher than the FEMA rate for a particular piece of equipment on the FEMA schedule, but

which is not a State rate as discussed above, the basis for that rate must be documented to FEMA. The Associate Director (AD) for Response and Recovery may approve that rate.

If a piece of equipment used by a subgrantee is not on the FEMA schedule, documentation to justify the requested rate must be submitted to FEMA. If the rate is less than \$75 per hour, the DRM may approve the rate. If it is \$75 per hour or greater, it will be submitted to the AD, who may approve the rate if it is justified.

If the entity does not have established rates for use in its normal day-to-day operations, FEMA rates will be used. If it is necessary for an applicant to rent equipment, FEMA equipment rates are not applicable to rented equipment. The DSR should denote the type and size of the equipment used, hourly rate, dates, hours, and location of usage, and if the costs included an operator. Reasonable (going rates for the area) costs should be applied. These costs will be reviewed to determine if they are reasonable and will be considered for eligibility.

Administrative Expenses

OMB Circular A-87 allows reasonable grant administration expenses to be claimed unless they are limited or replaced by a statutory provision. The Stafford Act contains specific provisions for administrative costs for subgrantees and grantees. The Stafford Act provides an allowance based on a percentage of eligible disaster work funding. It is different for grantees and subgrantees.

For the subgrantee, the allowance is calculated as follows:

- ◆ For the first \$100,000 of net eligible costs, 3 percent of such net eligible costs;
- ◆ For the next \$900,000 of net eligible costs, 2 percent of that \$900,000;
- ◆ For the next \$4,000,000 of net eligible costs, 1 percent of that \$4,000,000; or,
- ◆ For net eligible costs in excess of \$5,000,000, 1/2 percent of that excess.

The allowance covers “Necessary costs of requesting, obtaining, and administering Federal assistance...” This means that all grant administration expenses for a subgrantee that could be allowed under Circular A-87 are replaced by the percentage allowance.

For the grantee, the allowance is calculated as follows:

- ◆ For the first \$100,000 of the *total amount of assistance provided to all subgrantees*, 3 percent of such *total amount*;
- ◆ For the next \$900,000 of total assistance, 2 percent of that \$900,000;
- ◆ For the next \$4,000,000 of total assistance, 1 percent of that \$4,000,000; or,
- ◆ For total assistance in excess of \$5,000,000, 1/2 percent of that excess.

The total amount of assistance provided is the Federal share of all subgrantee assistance. Unlike the subgrantee’s allowance, the allowance for the grantee is not intended to cover all administrative costs. It covers “overtime pay and per diem and travel expenses, but not including pay for regular time for State employees preparing damage survey reports, final inspection reports, project applications, final audits and related field inspections.” The base for this percentage allowance is the sum of all actual grants made to subgrantees including their respective administrative allowances.

To summarize in tabular form:

	Base	Coverage
Subgrantee	The full DSR amounts for its own subgrant.	All grant administration costs.
Grantee	<ol style="list-style-type: none"> 1. Federal share of all subgrantee grants, plus; 2. Subgrantee percentage allowances, plus; 3. Federal share of State Management costs. 	Overtime labor costs, per diem, and travel expenses for personnel managing the grant.

Because the grantee allowance covers only certain grant administration costs, other costs may be claimed directly. These are called “State Management Administrative Costs” in the regulations.

Included in this are regular time salaries for State employees managing the grant, inspectors, and auditors, equipment such as the computer needed to manage the FEMA grant program, space rental when required, and other incidentals. This DSR for State management costs should not include any overtime, per diem, or travel since those items are fully covered by the percentage allowance. This DSR, which is written for the grantee’s agency that administers the disaster grant, is also included in the base for calculating the grantee’s percentage allowance.

These *grant* administration expenses are different from *project* administration expenses. Eligible costs for a project may include those personnel above field foremen to the extent that their time on the specific project can be documented.

A special situation may exist concerning administrative expenses for Indian tribes applying for disaster assistance. If the tribe applies through the State, normal rules for subgrantees will apply. If, however, the tribes must apply directly to FEMA (see section on submission of applications under “The Applicant’s Briefing” in Chapter 2), the tribe will be a grantee and will receive a grantee’s administrative allowance plus a DSR for State Management Administrative Costs.

Audit Costs

FEMA does not require specific program audits to be performed by the State. Requirements for audits under the Single Audit Act of 1984 (Pub. L. 98-502) are contained in 44 CFR Part 14. These audits cover all Federal assistance received by the State or local government. For the grantee, the portion of audit costs attributable to FEMA assistance (in the ratio of FEMA assistance funds to total funds expended by the recipient) would be an eligible cost. However, for subgrantees, audit costs are covered by the percentage allowance for administrative expenses.

In addition, FEMA may elect to conduct Federal program audits of certain grants. In that event, the costs are totally covered by FEMA.

Section F - Insurance

Prior to approval of a FEMA grant for the restoration of an insurable facility or its contents damaged by a major disaster, the eligible costs shall be reduced by the amount of any insurance recovery actually received or anticipated, relating to eligible costs. FEMA will base its determination of eligible costs on whether the insurance settlement is reasonable and proper, in FEMA's opinion. The maximum payment for a deductible for NFIP will be \$750. Before making the offset against eligible costs, the amount of the recovery to be offset may be adjusted.

There is a special reduction of eligible costs for facilities in the SFHA. A reduction in disaster assistance equal to potential flood insurance recovery is required by the Stafford Act. For any insurable structure that is located within the identified special flood hazard area (100-year floodplain), FEMA will reduce eligible costs by the maximum amount of insurance proceeds that could have been obtained from a standard NFIP flood policy. This is done whether or not the facility was actually insured.

This will leave a few items still eligible for FEMA assistance:

- ◆ The deductible, although this is limited to the minimum amount;
- ◆ Items that would not have been covered by a NFIP policy, such as furnishings in a basement; and,
- ◆ Damages in excess of the maximum coverage available.

FEMA will have an insurance adjuster who is familiar with the NFIP survey such facilities to determine the amount that could have been obtained as an insurance settlement. This amount will be deducted from the otherwise eligible costs for the facility repair.

There is a limited exemption from this reduction for eligible PNPs. The exemption is that the reduction will not be made for a PNP facility for which insurance could not be purchased because the community in which the PNP facility was located was not participating in the NFIP. However, this exemption may be of limited value to the PNP applicant because of requirements in the Stafford Act to purchase insurance for the future. These requirements are

described in the last paragraph of this section. If the community is not participating in the NFIP, the applicant will be unable to purchase insurance from the Federal Insurance Administration (FIA).

One way to avoid this impasse would be for the community to be reinstated in the NFIP within 6 months of the disaster declaration date. A community may be already thinking of renewing participation in NFIP because of the impact that non-participation has on the eligibility of its citizens for FEMA assistance. Another way would be for the PNP applicant to purchase a policy other than the standard NFIP policy. If a policy is purchased through either of these methods, then the reduction will not be applied to the costs for that facility.

As a condition for FEMA assistance, an applicant must obtain and maintain insurance to cover the assisted facility for the hazard that caused the major disaster in the amount of the DSR estimate before deductions are made such as the flood insurance reduction or an insurance settlement. DSRs for damages less than \$5,000 are exempt from this requirement. If the State insurance commissioner determines that insurance for the facility in question is not reasonably available, adequate and necessary, then the project is also exempt. When it is required, the insurance must be maintained. In the case of flood damaged properties, this requirement must be transferred to new owners even if ownership of the property changes. The new owner must be informed of the requirement or the previous owner will be liable for future disaster damages in accordance with section 582 of the Flood Insurance Reform Act of 1994. If the facility is involved in a future disaster, then the facility will not receive any assistance unless any previously required insurance was maintained in effect at the time of the future disaster. No assistance will be provided under Section 406 of the Stafford Act for any facility for which assistance was provided as a result of a previous major disaster unless all insurance required by FEMA as a condition of previous assistance has been obtained and maintained. Not even the deductible amount, or damages in excess of the NFIP limits, or for flood damaged items not covered by standard NFIP policy will be eligible.

This requirement for the purchase of insurance (**other than flood insurance**) may also be satisfied by the applicant's participation in an insurance pool. These pools are often formed by groups of local governments for purposes of reducing premium costs. To satisfy the requirements of the regulations for insurance purchase, such pools must be recognized by the State insurance commissioner and evidence of that recognition be provided to FEMA. There also must be a "policy" document from the pool which indicates the hazard coverage provided by the pool and the amount of coverage for the particular facility being assisted. In a future disaster, a facility subject to this requirement will have the eligible damage costs reduced by the amount of the eligible damages from the previous disaster or the amount of actual proceeds from the pool, whichever is greater.

